



March 1, 2000

Mr. Lonnie Smith
Chief of Police
City of Big Spring
400 East 4th Street
Big Spring, Texas 79720-2635

OR2000-0821

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132562.

The City of Big Spring (the “city”) received a request for specified arrest reports involving a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Information regarding criminal conduct is generally considered to be of legitimate public interest.

You assert that it would be “an unwarranted invasion of the arrestee’s privacy interests” to disclose the “Personal History and Arrest Records,” quoting *Houston Chronicle*, *Id.* at 188. We note that if the requestor were asking for any unspecified records in which the named individual is identified as a suspect, the requestor would be asking that the city compile the individual’s criminal history. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the

individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). Here, however, the requestor does not seek "Personal History and Arrest Records," but specified offense reports. Accordingly, we conclude that the requested information is not protected by common law privacy under section 552.101.

However, if any of the information relates to juvenile conduct that occurred prior to January 1, 1996, that information would be considered confidential under section 552.101 in conjunction with the Family Code provision protecting juvenile criminal records. The submitted information contains an arrest report which relates to prior conduct which may constitute a juvenile record. We have marked that information. Since the conduct took place prior to January 1, 1996, the confidentiality of the information is governed by the law in effect at that time, section 51.14(d) of the Family Code.¹ Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Accordingly, we conclude that, if that arrest report describes conduct that occurred when the arrestee was a juvenile, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

In addition, the arrest report that may relate to juvenile conduct contains a social security number. You may be required to withhold the social security number as confidential. The social security number may be confidential if it was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); see Open Records Decision No. 622 (1994).

In summary, you must release the requested information, except that you must withhold the marked information on the arrest report that may relate to juvenile conduct if it does in fact relate to juvenile conduct. You may also be required to withhold the social security number.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹Section 51.14(d) of the Family Code was repealed by the Seventy-fourth legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590 (current version at Family Code § 58.007 *et seq.*). However, the repealing bill provides that "[c]onduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* § 106, 1995 Tex. Gen. Laws at 2591; Open Records Decision No. 644 at 5(1996).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Patricia Michels Anderson".

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 132562

Encl. Submitted documents

cc: Mr. Gerald Bradford
Certified Investigative Consultants
P O Box 343
Midland, Texas 79702
(w/o enclosures)